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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 United States of America,
10 Plaintiff,

11 v.

12 \$44,980.00 in United States Currency,
13 Defendant *In Rem*.
14

No. CV-23-01453-PHX-JAT

ORDER

15 Pending before the Court is the United States of America's ("Plaintiff") Motion for
16 Default Judgment. (Doc. 8). For the following reasons, the Court grants Plaintiff's motion.

17 **I. BACKGROUND**

18 On July 21, 2023, Plaintiff initiated this *in rem* forfeiture proceeding against the
19 defendant property, \$44,980.00 of United States currency. (Doc. 1 at 1). Plaintiff alleges
20 that the defendant property was "used or intended to be used in exchange for controlled
21 substances" or to facilitate a violation of the Controlled Substances Act. (Doc. 8 at 1).
22 Plaintiff also alleges that the defendant property constitutes proceeds traceable to unlawful
23 activity under 18 U.S.C. § 1952. (*Id.* at 2). Plaintiff argues that, based on these violations,
24 the defendant property is subject to forfeiture under 21 U.S.C. § 881(a)(6) and 18 U.S.C.
25 § 981(a)(1)(A) and (C). (*Id.* at 2, 4).

26 The facts recited below reflect Plaintiff's allegations in the complaint. The
27 defendant property was found inside of a popcorn tin shipped via United States Postal
28 Service ("USPS") Priority Express Mail. (Doc. 1 at 7). On January 25, 2023, inspectors

1 with the United States Postal Inspection Service (“USPIS”) in Phoenix, Arizona identified
2 the Priority Mail Express package as suspicious during a routine screening. (*Id.* at 3–4).
3 Inspectors noticed that the package was heavier than a typical mailing and had a
4 handwritten label with no business account number, indicating the sender likely paid cash.
5 (*Id.* at 4). Inspectors recognized these characteristics as indicators that the package might
6 be associated with illegal activity. (*Id.*). The same day, a canine inspector gave a positive
7 alert to the parcel. (*Id.* at 7).

8 USPIS then investigated the two addresses on the parcel. (*Id.* at 4). The package was
9 sent by “Northend Empire LLC” in Champaign, Illinois to “Reggie’s Barbecue” in
10 Phoenix, Arizona. (*Id.*). The Northend Empire LLC address was a P.O. Box registered to
11 Natris Morris. (*Id.*). Business records indicated that Northend Empire LLC was an Illinois
12 entity registered to Morris and Dorian Parsons. (*Id.* at 4, 6). Reggie’s Barbecue was
13 registered to Reginald and Kathy McKinley. (*Id.* at 5). Further investigation revealed that
14 Reginald, Dorian, and Morris had prior Illinois convictions for narcotics-related offenses.
15 (*Id.*).

16 On January 26, 2023, USPIS inspectors obtained and executed a search warrant on
17 the Priority Express Mail package. (*Id.* at 7). Inside, they discovered \$44,980 in United
18 States currency in a plastic bag. (*Id.*). The plastic bag was concealed in a maroon and gold
19 gourmet popcorn container, along with popcorn, towels, and bubble wrap. (*Id.* at 7, 9). The
20 cash was rubber-banded in eight bundles and consisted mostly of \$20 bills. (*Id.* at 7).
21 Inspectors found no notes, receipts, or instructions in the parcel. (*Id.* at 8).

22 On January 27, 2023, a customer identifying himself as Nate Morris called USPS to
23 inquire about the Priority Express Mail package. (*Id.* at 9). Morris provided his contact
24 information but refused to disclose the contents of the package to the USPS representative.
25 (*Id.*). On February 1, 2023, Morris called USPS again to ask about the package. (*Id.*). When
26 the representative inquired about the package’s contents, Morris stated that it contained
27 legal papers, ashes, and an urn, which he described as a “maroon and gold tin can.” (*Id.*).
28 He confirmed that the package was intended for Reggie’s Barbecue. (*Id.*).

1 On April 22, 2023, Nate Morris submitted a claim to USPIIS for the defendant
2 property. (*Id.* at 11). Morris stated in his claim form that “Northend Empire LLC is a
3 professional sports management agency and sports event organizer.” (*Id.*). Morris claimed
4 that Reggie’s Barbecue was one of Northend Empire LLC’s vendors and that the currency
5 was a deposit to purchase a food truck for the February 2023 Superbowl. (*Id.* at 11–12).
6 Morris also claimed that Reggie’s “insisted that the mode of payment to be cash only.” (*Id.*
7 at 12). Morris stated that the seized property was “revenue generated by the applicant
8 through following sources: cash from bank account, cash from prior events and a cash
9 investment by family member.” (*Id.*).

10 On May 9, 2023, USPIIS sent a letter to Morris and his attorney, requesting that
11 Morris provide a written statement regarding his claim under penalty of perjury. (*Id.* at 13).
12 In the response letter submitted by his attorney, Morris stated that he mailed the money
13 inside the popcorn can as a “gesture to celebrate the venture.” (*Id.*). He also provided bank
14 statements for an account held by Northend Empire LLC. (*Id.* at 14). The statements
15 showed that, from October 2022 to approximately January 25, 2023, the average balance
16 in the account was under \$1,000. (*Id.*). On January 26, 2023, the day the package was
17 seized by USPIIS, the account received a credit in the amount of \$38,400 from an Illinois
18 LLC. (*Id.* at 15). In March 2023, the account sent two different Zelle payments to Reggie’s
19 Barbecue, totaling \$10,000. (*Id.*).

20 Plaintiff filed this forfeiture action on July 21, 2023. (*Id.* at 17). On July 27, 2023,
21 Plaintiff sent notice of the forfeiture action to Nate Morris and his attorney via certified
22 mail. (Doc. 6-1 at 2). Plaintiff also posted notice “on an official government internet site
23 (www.forfeiture.gov) for at least 30 consecutive days, beginning on July 25, 2023.” (Doc.
24 8 at 2; Doc 6-1 at 12). No response to the complaint was filed. (Doc. 6 at 1). On October
25 13, 2023, Plaintiff requested that the Court enter default in its favor, and the Clerk of Court
26 did so on October 16, 2023. (*Id.*; Doc. 7).

27 Plaintiff now moves for default judgment under Fed. R. Civ. P. 55(b). (Doc. 8). No
28 response has been filed.

II. FORFEITURE PROCEDURES

Forfeiture actions are governed by Rule G of the Supplemental Rules for Certain Admiralty and Maritime Claims (“Supplemental Rules”). *See United States v. \$43,258.00 in United States Currency*, No. CV-22-01388-PHX-DWL, 2023 WL 2540244, at *3 (D. Ariz. Mar. 16, 2023). Under Rule G(2), a complaint in a forfeiture action must:

- (a) be verified;
- (b) state the grounds for subject-matter jurisdiction, in rem jurisdiction over the defendant property, and venue;
- (c) describe the property with reasonable particularity;
- (d) if the property is tangible, state its location when any seizure occurred and—if different—its location when the action is filed;
- (e) identify the statute under which the forfeiture action is brought; and
- (f) state sufficiently detailed facts to support a reasonable belief that the government will be able to meet its burden of proof at trial.

Id. The complaint here complies with the requirements of Rule G(2). (Doc. 1). Additionally, as required by Rule G(3), the defendant property was seized by a U.S. marshal pursuant to a warrant for arrest *in rem*. (Docs. 4 & 5).

Plaintiff has also complied with the notice requirements of Rule G(4). When the identity of a property owner is known, “notice must be sent by means reasonably calculated to reach the potential claimant.” Rule G(4)(b)(iii)(A); *see also United States v. Real Prop.*, 135 F.3d 1312, 1315 (9th Cir. 1998) (reasoning that, when a claimant is known, the Fifth Amendment requires the government to give notice that “one desirous of actually informing the absentee might reasonably adopt to accomplish it”). Here, Plaintiff sent direct notice of the forfeiture action to Morris and his attorney via certified mail on July 27, 2023. (Doc. 8 at 2). “Courts have held that certified mail may be a means of providing notice reasonably calculated to reach known potential claimants.” *\$43,258.00 in United States Currency*, 2023 WL 2540244, at *4; *see also United States v. Approximately \$72,000 in U.S. Currency*, No. C-08-1305-JCS, 2009 WL 506866, at *7 (N.D. Cal. Feb. 27, 2009) (noting that certified mail is a means of service permitted under Fed. R. Civ. P. 5). In addition to notifying Morris directly, Plaintiff posted notice on an official

1 government internet site for at least 30 consecutive days. (Doc. 8 at 2). Publication notice
 2 of this kind complies with Rule G(4)(a). *See Real Prop.*, 135 F.3d at 1315 (suggesting that,
 3 when claimants are unknown, the Supplemental Rules require only publication notice of
 4 forfeiture proceedings). Plaintiff has therefore satisfied the notice requirements for known
 5 and unknown claimants under Rule G(4).

6 No appearance, claim, answer, or motion was filed by any party contesting the
 7 forfeiture, as required by Rule G(5) and 18 U.S.C. § 983(a)(4). *See \$43,258.00 in United*
 8 *States Currency*, 2023 WL 2540244, at *4 (finding claimant had no standing when claimant
 9 failed to comply with Rule G(5)'s procedural requirements for opposing the forfeiture).
 10 Accordingly, Plaintiff has satisfied the procedural requirements for bringing this forfeiture
 11 action *in rem*.

12 **III. DEFAULT JUDGMENT**

13 Once default has been properly entered pursuant to Fed. R. Civ. P. 55(a), this
 14 Court's "decision whether to enter a default judgment is a discretionary one." *Aldabe v.*
 15 *Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980) (per curiam); *see also Bankers Ins. Co. v. Old*
 16 *W. Bonding Co.*, No. CV-11-1804-PHX-DGC, 2012 WL 2912912, at *2 (D. Ariz. July 16,
 17 2012) (explaining that, "when default has been properly entered pursuant to Rule 55(a), the
 18 Court has discretion to grant default judgment pursuant to Rule 55(b)"). In considering
 19 whether to enter default judgment, a court may consider the following factors, known as
 20 the *Eitel* factors:

21 (1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff's
 22 substantive claim, (3) the sufficiency of the complaint, (4) the sum of money
 23 at stake in the action; (5) the possibility of a dispute concerning material
 24 facts; (6) whether the default was due to excusable neglect, and (7) the strong
 25 policy underlying the Federal Rules of Civil Procedure favoring decisions on
 the merits.

26 *Eitel v. McCool*, 782 F.2d 1470, 1471–72 (9th Cir. 1986). When considering these factors,
 27 the Court "takes the well-pleaded factual allegations in the complaint as true." *DirecTV,*
 28 *Inc. v. Hoa Huynh*, 503 F.3d 847, 854 (9th Cir. 2007) (internal quotation marks omitted)

(quoting *Cripps v. Life Ins. Co. N. Am.*, 980 F.2d 1261, 1267 (9th Cir. 1992)). “However, necessary facts not contained in the pleadings, and claims which are legally insufficient, are not established by default.” *Cripps*, 980 F.2d at 1267. The Court discusses the *Eitel* factors below, placing special emphasis on the second, third, and fourth factors.

A. The Second and Third *Eitel* Factors: The Sufficiency of the Complaint and The Merits of Plaintiff’s Substantive Claim

The second and third *Eitel* factors “are often analyzed together and require courts to consider whether a plaintiff has state[d] a claim on which [it] may recover.” *Ariz. Board of Regents v. Doe*, 555 F. Supp. 3d 805, 816 (D. Ariz. 2021) (internal quotation marks omitted) (quoting *Vietnam Reform Party v. Viet Tan-Vietnam Reform Party*, 416 F. Supp. 3d 948, 962 (N.D. Cal. 2019)). “Of all the *Eitel* factors, courts often consider the second and third factors to be the most important.” *See \$43,258.00 in United States Currency*, 2023 WL 2540244, at *4 (quoting *Vietnam Reform Party*, 416 F. Supp. 3d at 962).

Here, Plaintiff brings a forfeiture action under 21 U.S.C. § 881(a)(6). “Before a forfeiture will lie under § 881, the Government must first establish probable cause to believe that the seized property was connected to an illegal drug transaction.” *United States v. \$22,474 in U.S. Currency*, 55 F. Supp. 2d 1007, 1011 (D. Ariz. 1999); *see also* 18 U.S.C. § 983(c)(3) (explaining that, in a forfeiture action related to a criminal offense, the government must establish a “substantial connection between the property and the offense”). To establish probable cause, Plaintiff must show it “had reasonable grounds to believe a connection existed between the property and drug activities, supported by more than mere suspicion but less than *prima facie* proof.” *United States v. Currency, U.S. \$42,500.00*, 283 F.3d 977, 980 (9th Cir. 2002). If Plaintiff establishes probable cause, the burden then shifts to a claimant to prove, “by a preponderance of the evidence, that the money was not connected with illegal drug activity.” *Id.*

Taken as true, the factual allegations in the complaint establish that Plaintiff had probable cause to believe the defendant property was connected to illegal narcotics activity. First, the concealment of the defendant property in unusual packaging suggests that it was

1 related to an illegal drug transaction. The currency was bundled with rubber bands, placed
2 in a plastic bag, and concealed inside of a popcorn tin along with popcorn, towels, and
3 bubble wrap. (Doc. 1 at 7). Concealment of currency in unusual packaging is probative
4 evidence of illegal activity. *See United States v. \$105,180 in U.S. Currency*, No. CV-12-
5 08122-PCT-DGC, 2013 WL 2153326, at *8 (D. Ariz. May 17, 2013) (finding that currency
6 bundled in rubber bands, placed in plastic bags, and concealed underneath clothing in
7 luggage was “not consistent with legitimate business activity”).

8 In addition to its unusual contents, the Priority Express Mail package itself bore
9 indicia that it was related to illegal activity. For example, the package was heavier than
10 usual and had a handwritten label without a business account number, suggesting that the
11 sender paid cash. *See United States v. Approximately \$7,800.00 in U.S. Currency*, No. 1:19-
12 CV-00427-NONE-EPG, 2020 WL 773399, at *1 (E.D. Cal. Feb. 18, 2020) (ordering
13 default judgment in forfeiture action where inspectors determined that a handwritten
14 package label was probative of illegal narcotics activity). A canine inspector also gave a
15 positive alert to the parcel, indicating that narcotics odors were present. *See United States*
16 *v. U.S. Currency, \$30,060.00*, 39 F.3d 1039, 1043 (9th Cir. 1994) (finding that a positive
17 canine alert supports a connection to narcotics activity only when “combined with other
18 credible evidence clearly connecting the money to drugs”).

19 The quantity and denomination of the currency also suggest a connection to illegal
20 activity. Possession of a large amount of cash is “strong evidence that the money was
21 furnished or intended to be furnished in return for drugs.” *\$105,180 in U.S. Currency*, 2013
22 WL 2153326, at *8 (quoting *United States v. \$93,685.61 in U.S. Currency*, 730 F.2d 571,
23 572 (9th Cir. 1984)). While possession alone is insufficient to establish a substantial
24 connection to illegal drug activity, a “common sense reality of everyday life is that
25 legitimate businesses do not transport large quantities of cash rubber-banded into bundles
26 and stuffed into packages” *United States v. \$14,000 in U.S. Currency*, No. CV-12-
27 01546-PHX-JAT, 2014 WL 1230497, at *4 (D. Ariz. Mar. 25, 2014) (quoting *United States*
28 *v. \$242,484.00 of U.S. Currency*, 389 F.3d 1149, 1161 (11th Cir. 2004)).

1 Moreover, the currency consisted mostly of \$20 bills, which “furthers the inference
2 that the money was drug-related.” *United States v. \$27,800 in United States Currency*, No.
3 17-CV-00533-AJB-KSC, 2017 WL 6345394, at *4 (S.D. Cal. Dec. 8, 2017); *see also*
4 *\$14,000 in U.S. Currency*, 2014 WL 1230497, at *4 (noting that legitimate businesses
5 seeking to transport currency likely “would convert smaller denomination bills into larger
6 ones”). “The large amounts of currency and small denominations of some of the bills in
7 this action are strong evidence supporting a finding of probable cause.” *United States v.*
8 *Approximately \$17,872 in U.S. Currency*, No. C-08-03346-WHA, 2009 WL 2990496, at
9 *3 (N.D. Cal. Sept. 11, 2009).

10 The concealment, packaging, quantity, and denomination of the currency suggest
11 that Plaintiff had probable cause to believe a substantial connection existed between the
12 defendant property and illegal narcotics activity. Because Plaintiff has established probable
13 cause, the burden would shift to Morris to “prove, by a preponderance of the evidence, that
14 the money was not connected with illegal drug activity.” *Currency, U.S. \$42,500.00*, 283
15 F.3d at 980. Morris has not filed any answer or motion in this case and therefore has not
16 made that showing.

17 Even if Morris had filed a response, the facts alleged in the complaint do not suggest
18 that the defendant property was the product of legal activity. In his written statement to
19 USPIS, Morris gave a vague explanation about the source of the currency. He claimed that
20 the currency came from a family member, the business’s “prior events,” and a bank
21 account. (Doc. 1 at 12). However, bank statements showed that the average balance in the
22 Northend Empire LLC bank account was typically less than \$1,000 prior to January 25,
23 2023. (*Id.* at 14). Additionally, a financial investigation uncovered that the Northend
24 Empire LLC bank account sent Zelle payments to Reggie’s Barbecue totaling \$10,000. (*Id.*
25 at 15). This undermines Morris’s claim that Reggie’s Barbecue insisted on a cash payment.
26 (*Id.* at 12). Morris also made several inconsistent statements about the contents of the
27 package. The first time Morris called USPS, he refused to disclose the contents of the
28 package to the USPS representative. (*Id.* at 9). The second time he called USPS, he claimed

1 that the package contained legal papers, ashes, and a “maroon and gold” urn. (*Id.*). In his
 2 written response to USPS investigators, Morris stated that he mailed the money inside the
 3 popcorn can as a “gesture to celebrate the venture.” (*Id.* at 13). These inconsistent
 4 statements suggest that Morris intended to conceal the contents of the package and then,
 5 when the package was opened, to provide a post hoc explanation for the unusual contents.

6 Based on the facts alleged, Plaintiff had probable cause to believe that the seized
 7 property was connected to an illegal drug transaction under 21 U.S.C. § 881(a)(6). The
 8 second and third *Eitel* factors therefore favor entry of default judgment.

9 **B. The Fourth *Eitel* Factor: Sum at Stake**

10 “Under the fourth factor, the Court considers the amount of money at stake in
 11 relation to the seriousness of the conduct at issue in the litigation.” \$43,258.00 in *United*
 12 *States Currency*, 2023 WL 2540244, at *5. Here, \$44,980.00 of cash is at stake. Another
 13 judge in this District recently held that a similar sum of money weighed against granting
 14 default judgment. *Id.* (finding that \$43,258.00 was “a substantial amount of money”). That
 15 court nevertheless found default judgment appropriate after balancing the *Eitel* factors. *Id.*
 16 at *6. Likewise, other judges in this Circuit have granted default judgment when a greater
 17 sum of money was at stake than the amount here. *See United States v. \$73,982.00 in U.S.*
 18 *Currency*, No. 3:12-CV-00363-LRH-WGC, 2013 WL 6844802, at *2 (D. Nev. Dec. 19,
 19 2013) (finding that the sum of \$73,982.00 was “not so great as to preclude default
 20 judgment”); *see also United States v. Approximately \$72,000 in U.S. Currency*, No. C-08-
 21 1305-JCS, 2009 WL 506866, at *4 (N.D. Cal. Feb. 27, 2009) (“Nor is the sum of money
 22 at stake in the action so large as to warrant a denial of the motion.”). The Court concludes
 23 that the sum of money here, while not insignificant, does not preclude default judgment.

24 **C. The Remaining *Eitel* Factors: Prejudice, Dispute of Material Facts, Excusable**
 25 **Neglect, and Decisions on the Merits**

26 In cases like this one, where the motion for default judgment is uncontested, “the
 27 first, fifth, sixth, and seventh [*Eitel*] factors are easily addressed.” *Zekelman Indus. Inc. v.*
 28 *Marker*, No. CV-19-02109-PHX-DWL, 2020 WL 1495210, at *3 (D. Ariz. Mar. 27, 2020);

1 *accord \$43,258.00 in United States Currency*, 2023 WL 2540244, at *4.

2 The first factor, possibility of prejudice, weighs in favor of default judgment. A
 3 possibility of prejudice exists when failure to enter default judgment would deny a plaintiff
 4 judicial resolution of the claims presented or leaves a plaintiff “without other recourse for
 5 recovery.” *Pritikin ICR, LLC v. Apricus Health MSO, LLC*, No. CV-23-00592-PHX-JZB,
 6 2024 WL 1181137, at *3 (D. Ariz. Feb. 29, 2024) (quoting *PepsiCo., Inc. v. Cal. Sec. Cans*,
 7 238 F. Supp. 2d 1172, 1177 (C.D. Cal. 2002)). Here, Plaintiff would be prejudiced, because
 8 Plaintiff “would be required to litigate this action even though no potential claimants have
 9 appeared to contest this forfeiture.” *\$27,800 in United States Currency*, 2017 WL 6345394,
 10 at *4; *see also United States v. Approximately \$28,000 in U.S. Currency*, Case No. 09-
 11 5377-SC, 2010 WL 1340110, at *4 (N.D. Cal. Apr. 5, 2010) (noting that prejudice exists
 12 where the government would have to expend further resources in an action with no
 13 opposing party).

14 For similar reasons, the fifth and sixth factors do not preclude default judgment.
 15 “Because no potential claimant has participated, there is no dispute over material facts and
 16 no indication that default is due to excusable neglect.” *\$43,258.00 in United States*
 17 *Currency*, 2023 WL 2540244, at *4. Little possibility exists that default resulted from
 18 excusable neglect because Morris has previously communicated with USPIIS, had retained
 19 an attorney, and was duly served notice of this forfeiture action. *See PepsiCo.*, 238 F. Supp.
 20 2d at 1177 (reasoning that a defendant’s “early participation in the matter” suggested that
 21 excusable neglect was unlikely).

22 Lastly, the seventh factor does not preclude default judgment. Cases “should be
 23 decided upon their merits whenever reasonably possible,” *Eitel*, 782 F.2d at 1472.
 24 Nonetheless, “the mere existence of Rule 55(b) ‘indicates that this preference, standing
 25 alone, is not dispositive.’” *Bankers Ins. Co.*, 2012 WL 2912912, at *3 (quoting *PepsiCo.*,
 26 238 F. Supp. 2d at 1177). A decision on the merits is “impractical, if not impossible,” when
 27 no response to the complaint is filed. *PepsiCo.*, 238 F. Supp. 2d at 1177. Because no
 28 response to the complaint has been filed here, this factor does not preclude entering default

1 judgment.

2 On balance, the *Eitel* factors weigh in favor of default judgment. The Court therefore
3 grants Plaintiff's motion.

4 **IV. CONCLUSION**

5 Based on the foregoing,

6 **IT IS ORDERED** that Plaintiff's motion for default judgment (Doc. 8) is
7 **GRANTED.**

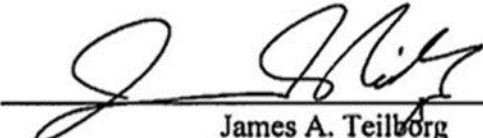
8 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the interest
9 of Nate Morris DBA Northend Empire LLC, and all others in defendant \$44,980.00 in
10 United States currency is forfeited to the United States of America in accordance with 21
11 U.S.C. § 881 and 18 U.S.C. § 981(a)(1)(A) and (C).

12 **IT IS FURTHER ORDERED** that the defendant property be disposed of according
13 to law.

14 **IT IS FINALLY ORDERED** that the Clerk of the Court shall enter judgment
15 accordingly.

16 Dated this 12th day of April, 2024.

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James A. Teilborg
Senior United States District Judge